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Property—Indian Lands—Claim for Misappropriation Dismissed on Showing of Release

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Another problem presented was the standard to be applied in determining when property is unidentifiably described so as to constitute a jurisdictional defect. The test has been set out as

[w]hether the description is sufficiently definite to enable the owner and all persons interested to know and ascertain, by inquiry at the appropriate office or examination of the assessment rolls, what premises are assessed, and to identify them with reasonable certainty, so that it may fairly be said that a particular tract or parcel of land is the parcel or tract assessed, and to which the purchaser on the tax sale is entitled to possession.²⁸

In the present case the property had had the same tax description and the tax had been paid on that description for many years. The plaintiff had employed a tax searcher who located the property, but erroneously did not discover the 1942 tax unpaid. The Court took into consideration the special knowledge of persons who had been able to locate or identify the property, the abstract adequacy of geographical description for due process, and, because of the nature of tax sales, the reluctance of the courts to divest the owner's title unless the statutory requirements are strictly observed.

The owner had also argued that the purported tax deed was void because the tax certificate was made out to a non-existent corporation which came into existence only a matter of days later. The Court agreed, holding as an alternative ground to the main rationale of the case, that there was no grantee in existence to whom the tax certificate could run. On the analysis of the evidence, the Court rejected the claim of the defendant that the corporation was *de facto* in existence at the time the deed was delivered.²⁹

Indian Lands—Claim for Misappropriation Dismissed on Showing of Release

When the New York State Power Authority appropriated Barnhart's Island in the St. Lawrence River, the St. Regis Tribe of Indians brought an action for compensation for their rights in the island. The Indians claimed they had a recognized title in the island; that they had never been compensated for its extinguishment; that an 1856 payment allegedly made for such compensation could not be so considered for it was not in compliance with the Indian Intercourse Act of 1802.³⁰

28. *People v. Sohmers*, 150 App.Div. 8, 134 N.Y. Supp. 543 (3d Dep't 1912), *aff'd* 206 N.Y. 39, 99 N.E. 156 (1912); *Shea v. Campbell*, 71 Misc. 230, 128 N.Y. Supp. 508 (Sup.Ct. 1911).

29. *Kiamesha Dev. Corp. v. Guild Properties*, 4 N.Y. 2d 378, 388, 175 N.Y.S. 2d 63, 70 (1958).

30. 25 U.S.C. §177. The applicable provision of this statute provides that dealings in respect to Indian lands must be had with the consent and approbation of United States Commissioners appointed to supervise the negotiations.

In dismissing the Indians complaint on the ground that their claim had been released, a unanimous Court held³¹ that where a dispute arose over interpretation of the treaty between the "Seven Nations of Canada" and the State of New York, conducted in 1796 under Federal auspices,³² the New York Legislature could settle that dispute by a legislative grant of compensation and the Indian Inter-course Act would be inapplicable since there was no new purchase of property.

As to the Indian contention that payment was not made, the Court said that an entry on the records of the State Comptroller that the sum of \$5,960.00 had been paid to the St. Regis Tribe in "full [satisfaction] of their claim" raised a presumption of payment which a mere assertion of non-payment by the Indians could not rebut. In considering the other contentions of the Indians, the Court took judicial notice of the lack of certainty in the United States—Canada boundary line following the Treaty of Paris in 1783,³³ an uncertainty not removed until after the Treaty of Ghent of 1814.³⁴ Because of this uncertainty, reasoned the Court, when the Treaty of 1796 was made with the Indians, the term "lands within the State of New York" was necessarily ambiguous. When the legislature made a grant of compensation to the Indians in 1856, therefore, it was to compensate for pre-emption of Barnhart's Island after final boundary determination brought it within the terms of the 1796 treaty. The Indian claim and the 1856 payment related back to the treaty of 1796, ruled the Court, and hence the Indian Inter-course Act of 1802 is inapplicable.

The Court's interpretation of the 1796 treaty appears tenuous. After the Treaty of Paris in 1783, Great Britain governed Barnhart's Island and controlled Indian activities thereon. As the record below stated, nine-tenths of the river's water flowed between the island and the United State's shore, and it is to be noted that both before and after the Webster-Ashburton Treaty of 1842, the greater part of the island lay within the boundaries of Canada.³⁵ That New York State so regarded the island is evidenced by the reports of legislative committees to which the Court refers, wherein it is said that the island came within New York jurisdiction, not by definitive interpretation of the Treaty of Paris, but by

31. *St. Regis Tribe of Mohawk Indians v. State*, 5 N.Y.S.2d 24, 177 N.Y.S.2d 289 (1958).

32. The St. Regis Tribe was represented in this treaty negotiation which resulted in the "Seven Nations of Canada" ceding to the State of New York, ". . . . all lands within the said State . . .," except for a six mile area not here applicable.

33. Treaty ending the United States Revolution and establishing the boundary line between the United States and Canada as the middle of the St. Lawrence River.

34. Marking the end of the War of 1812 and appointing a commission to determine the intent of the words used in the Treaty of Paris, *supra* note 33.

35. Treaty on boundaries, finally settling questions of the United States' northeastern boundary in 1842. An excellent discussion of the problems and their solution may be found in PRATT, *A HISTORY OF UNITED STATES FOREIGN POLICY*, 192 (1955).

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exchange with Britain as part of a compromise for settlement of another portion of the boundary.³⁶ It seems reasonable to conclude that although there may have been ambiguity in the 1796 treaty because of the ambiguity in the Treaty of Paris, it did not extend to Barnhart's Island, as to which there was no uncertainty under the Treaty of Paris.

The dispute for which the 1856 compensation was granted seems to have had its origin in a grant by the State in 1823 to David Ogden, which included Barnhart's Island. Until that time, the Indians appear to have had a recognized title to the island, for the extinguishment of which they were not compensated. The origin of this claim, being in a transaction subsequent to 1796 and having to do with extinguishment of Indian title, would seem to come within the Indian Intercourse Act.

Although the Court, in the instant case, takes the position, though only in dicta, that the Indian Intercourse Act is inapplicable to the State of New York when exercising its pre-emptive rights to Indian lands,³⁷ that position is no longer tenable since it has been overruled in a recent decision by the United States Court of Appeals, Second Circuit.³⁸

Rent Control—Per Curiam

Under the Emergency Housing Rent Control Law, housing accommodations subject to the act cannot be withdrawn from the rental market without prior approval of the State Rent Commission,³⁹ which approval will be given where it appears that the applicant is acting in good faith and, as here applicable, would suffer hardship by being compelled to continue to rent his property.⁴⁰ The Court refused to upset (as unreasonable) the denial of such permission by the State Rent

Administrator where the applicant sought to withdraw a third floor apartment only, occupied by elderly tenants of long standing when the applicant intended to continue renting the first floor to a business interest at a substantial profit.⁴¹

36. *St. Regis Tribe of Mohawk Indians v. State*, *supra* note 31, at 30, 177 N.Y.S. 2d at 293.

37. *Seneca Nation of Indians v. Christie*, 126 N.Y. 122, 27 N.E. 275 (1891); "To require the presence and approbation of a United States Commissioner at a treaty or transaction where the State has the exclusive right to deal with the matter concerned, would appear to result in a conflict of legal rights. Evidence shows that the existence of such a requirement was not recognized by either the State of New York or by the United States," *United States v. Franklin County*, 50 F. Supp. 152 (W.D.N.Y. 1943).

38. *Tuscarora Nation of Indians v. Power Authority*, 257 F.2d 885 (2d Cir. (1958)).

39. McKinney's Unconsolidated Laws, §8590(4).

40. Rent and Eviction Regulations §59, McKinney's Unconsolidated Laws Appendix.

41. *Mercantile Enterprises, Inc. v. Weaver*, 4 N.Y.2d 375, 175 N.Y.S. 2d 61 (1958).